

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 60 of 2004

in

COMPANY PETITION No 205 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VAJIR SUBHAN

Versus

NEW SWADESHI MILLS(UNIT OF GSTC)

Appearance:

1. COMPANY APPLICATION No. 60 of 2004
MR VM DHOTRE for Petitioner No. 1
OFFICIAL LIQUIDATOR for Respondent No. 1
MR NITIN K MEHTA for Respondent No. 2
NOTICE SERVED for Respondent No. 3
MR UDAY BHATT, A.G.P. for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 28/12/2004

ORAL JUDGEMENT

1. The applicant was an employee of New Swadeshi Mills (in liquidation and hereinafter referred to as "the Company"), which has been dissolved.

2. According to the applicant, on 23rd January, 1984, he was wrongfully dismissed from service by the Company and, therefore, he had filed T Application No. 263/1984 in the Labour Court at Ahmedabad. The Company was closed down on 8th June, 1984 and, thereafter, with effect from 8th November, 1985 all the assets of the Company had been taken over by Gujarat State Textile Corporation Ltd. under the provisions of the Gujarat Closed Textile Undertakings (Nationalisation) Act, 1986 (hereinafter referred to as "the Act").

3. The case of the applicant is that the T Application, which had been filed by the applicant, was decided in his favour and yet the amount payable to him was not paid and, therefore, Application No. 203/1992 had been filed by him before the Labour Court, Ahmedabad. The said application was granted on 7th January, 2002. It is the case of the applicant that in pursuance of the said order dated 7th January, 2002, passed in Company Application No. 203/1992, the Opponents should be directed to pay the amount payable to the applicant.

4. In pursuance of notice issued by this Court, learned advocate Shri Nitin Mehta has appeared for respondent no. 2 whereas learned A.G.P. Shri Uday Bhatt has appeared for Opponents nos. 3 and 4. The Official Liquidator has appeared personally.

5. It has been submitted on behalf of the Opponents that by virtue of the provisions of Section 3 of the Act, all the assets of the Company had been transferred to GSTC but the liabilities of the Company had not been taken over by GSTC. They have referred to the provisions of Section 5 of the Act, which deal with the liability of the Company. Section 5 reads as under;

"5.(1) Every liability of the owner of the specified textile undertaking in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the State Government or the Corporation.

(2) For the removal of doubt, it is hereby declared that,---

(a) save as otherwise expressly provided in this Section or in any other Section of this Act, no liability, in relation to the specified textile undertaking in respect of any period prior of the appointed day, shall be enforceable against the State Government or the Corporation;

(b) no liability of the specified textile undertaking or any owner thereof for the contravention, before the appointed day, of any provisions of law for the time being in force,

shall be enforceable against the State Government or the Corporation.

6. Looking to the provisions of Section 5 of the Act, it is clear that the liabilities, which the Company had incurred before 8th November, 1985, the Company was liable to discharge the same. It has been therefore submitted by the learned advocates appearing for the Opponents that neither Opponent no. 2 nor Opponent no. 3 is liable to make any payment to the applicant in pursuance of the order dated 7th January, 2002 passed in Application No. 203/1992 by the Labour Court, Ahmedabad.

7. It has been submitted by the learned advocates that the Company stood dissolved by an order dated 26th July, 1995. Even GSTC has been ordered to be wound up and winding up proceedings in respect of GSTC are pending at present. It has been further submitted that looking to the nature of liability, it is clear that the liability to make payment to the applicant was of the Company and not of GSTC, as the applicant had never become an employee of GSTC. It has been submitted on behalf of the Opponents that the applicant had never lodged his claim before the Official Liquidator as a workman of the Company and possibly for that reason, no amount was paid to the applicant by the Official Liquidator of the Company. It has been further submitted that the applicant has approached this Court in 2004, in respect of his dues which, according to him, were payable by the company in 1984 or at the most when he succeeded before the Labour Court in 1990. The claim of the applicant is a belated one and the Opponents are not liable to pay any amount to the applicant for the reasons stated hereinabove.

8. I have heard the learned advocates and have also perused the record pertaining to the case. Looking to the provisions of the Act, it is very clear that only the assets of the Company had been taken over by GSTC and therefore, GSTC cannot be made liable to make any payment to the applicant in respect of the liability of the Company. It is also clear that the applicant had never lodged any claim before the Official Liquidator and possibly for that reason, no amount was paid to him. The applicant has approached this Court in 2004 i.e. after several years and that too in respect of the liability of the Company, which has already been dissolved on 26th July, 1995. For the aforesaid reasons the applicant is not entitled to any of the prayers made in the application.

9. Learned advocate Shri Dhotre has submitted that according to Section 22 of the Act, GSTC should be made liable to pay the dues of the Company in respect of gratuity and provident fund of the applicant. In my opinion, there is no substance in the said argument because, at the most the Commissioner of payment could have been made liable for making payment of liabilities which existed as on 8th November, 1985. It is pertinent to note that the Company got dissolved on 26th July, 1995. The order of the Labour Court had been passed in T Application No. 263/1984 on 7th March, 1990 and, therefore, the applicant ought to have lodged his claim before the Official Liquidator of the Company. But, for the reasons best known to the applicant, he did not lodge any claim. As stated hereinabove, the company got dissolved on 26th July, 1995 and, therefore, no order can be passed against the Company after that date. The applicant did not think it proper to lodge any claim even before the Commissioner of payment. In the circumstances, such a belated claim made in 2004, in respect of past dues of a company, which has already been dissolved, cannot be entertained.

10. Learned advocate Shri Dhotre, in the course of his arguments, has relied upon a judgement of this Court delivered in Company Application No. 313/2000 in Company Petition No. 205/1996 dated 11th March, 2003. Upon perusal of the said judgement, it appears that the learned AGP, who had appeared in the said matter did not dispute the liability of the Opponents in the said application and, therefore, possibly, the application was granted. In the instant case, learned AGP Shri Uday Bhatt has submitted that the Opponents are not liable to make any payment to the applicant and, therefore, the judgement referred to by the learned

advocate cannot be relied upon.

11. For the facts stated hereinabove, it is clear that the Opponents cannot be made liable for any payment and, therefore, the application is rejected with no order as to costs.

(A.R. DAVE, J.)

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